

**REMARKS**

In the Office Action mailed February 14, 2008, the Examiner rejected claims 1, 2, 4, 7, 120, 121, 129, 134, 135, 137, 142, 147-150, 157, 164-167, 172, 174, 176, and 178 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,620,452 ("Yoon"); rejected claims 5, 130-132, 143-145, 153-155, 173, 175, 177, and 179 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yoon in view of U.S. Patent No. 3,032,039 ("Beaty"); and rejected claims 124, 126, 127, 138, 140, 151, and 152 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yoon.

By this Amendment, Applicant amends claims 1, 120, 127, 135, 148, and 152, cancels claim 149, and adds new claims 180 and 181. Claims 1, 2, 4, 5, 7, 120, 121, 124, 126, 127, 129-132, 134, 135, 137, 138, 140, 142-145, 147, 148, 150-155, 157, 164-167, and 172-181 are currently pending. Of these, claims 1, 120, 135, and 148 are independent.

Applicant respectfully traverses the Examiner's rejection of all of the pending claims as allegedly being unpatentable over Yoon or over Yoon in view of Beaty. However, in order to advance prosecution of this case, Applicant has amended each of independent claims 1, 120, 135, and 148. Amended independent claim 1 recites two arms and an integral anchoring portion on at least one of the arms, "wherein the other of the first and second arms does not include a structure for receiving the integral anchoring portion." Amended independent claims 120, 135, and 148 contain similar recitations.

Even assuming, as the Examiner contends, that in Yoon, arms 16 and 18 can correspond to the claimed arms, and tissue penetrating legs 50 can correspond to the claimed anchoring portions, Yoon nowhere teaches or suggests, and in fact Yoon teaches away from, “the other of” arms 16 and 18 “not includ[ing] a structure for receiving” any of legs 50. In fact, Yoon requires an aperture 36, on the arm opposite each of legs 50, for receiving each of legs 50. As described throughout Yoon, the invention of Yoon “prevents loosening of a surgical clip . . . and applies a more uniform pressure across the occluded vessel or organ by use of ductile tissue penetrating members that pass through apertures in at least one of the arms and are bent or plastically deformed against that arm.” Yoon, column 6, lines 15-21. It therefore also would not have been obvious to modify Yoon to remove a structure for receiving any of legs 50 because its teachings require such a structure for the invention to work for its intended purpose.

For at least these reasons, amended independent claims 1, 120, 135, and 148 and their dependent claims are allowable over Yoon.

In addition to being allowable because of their dependence on allowable independent claims 1, 120, 135, and 148, dependent claims 127, 152, 180, and 181 are allowable because they include two projections “located directly opposite to one another along the first and second arms.” Yoon teaches away from such projections because, as described above, Yoon requires an aperture 36, on the arm opposite each of legs 50, for receiving each of legs 50. Yoon therefore cannot have a projection “directly opposite to” another projection and still work for its intended purpose. For at least these reasons dependent claims 127, 152, 180, and 181 are allowable over Yoon.

For the above reasons, Applicant respectfully requests that the Examiner withdraw rejections of all pending claims and allow this application.

The Office Action contains characterizations of the claims and related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

In discussing the specification, claims, and/or drawings in this Amendment, it is to be understood that Applicant is in no way intending to limit the scope of the claims to an exemplary embodiment described in the specification or abstract and/or shown in the drawings. Rather, Applicant is entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: June 5, 2008

By: 

Leslie I. Bookoff  
Reg. No. 38,084  
(202) 408-4140